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July 30, 2019

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SENT VIA EMAIL AND US MAIL

Dan Rubins
MuckRock News
Dept. MR 76596
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Email: 76596-60579775@requests.muckrock.com

Re: Public Records Act request for Brady List, dated July 4, 2019

Dear Mr. Rubins:

Because this office represents several county law enforcement agencies, we are providing this further response to the District Attorney's response, which was sent to you yesterday regarding your above-referenced Public Records Act (PRA) request.

Your request asks for disclosure of "'Brady Lists,' 'Giglio Lists,' 'potential impeachment disclosure lists,' or similar compiled records or lists of records of the type set forth in California Penal Code §832.7(b)(1)(C)." We had previously sent you notice that we would be taking an additional 14-days to respond and requested clarification as to whether you were seeking all disciplinary records related to a sustained finding. You replied via email indicating that you are only interested in what is commonly referred to in law enforcement parlance as "Brady lists" (see e.g., *Brady v. Maryland* (1963) 373 U.S. 83).

As the District Attorney's response notes, any list maintained by the DA's office is not compiled based on "sustained findings" that may have occurred in disciplinary actions only, although any sustained finding of dishonesty as to a particular officer would result in the officer's name being included on the list. However, a list may also contain the names of officers who have not yet been afforded any due process (e.g., where no discipline has been sought and no sustained finding has been made) because the nature of the requirement imposed on a public prosecutor by *Brady v. Maryland* is to disclose any "potentially" inculpatory information. Any disclosure of an officer's name where the circumstances are such that the officer has not been subject to discipline and afforded the opportunity to clear his or her name, would infringe that officer's due process rights.

Dan Rubins, MuckRock News
Re: PRA Request
July 30, 2019

Although your request claims that a Brady list is the type of information set forth in California Penal Code section 832.7, subdivisions (b)(1)(C), we disagree. A Brady list or similar list is not included in the list of records that must be disclosed pursuant to Penal Code section 832.7. Senate Bill 1421, which amended the statutory provision governing the confidentiality of peace officer personnel records, did not affect the District Attorney's right to protect this type of information from public disclosure. Although the list itself may include information compiled from the type of information set forth in the statutory provision you have cited, the section does not mandate the disclosure of such a list. In sum, it is the position of this office that a Brady list is exempt from public disclosure pursuant to the following statutory and constitutional provisions: Government Code sections 6254, subdivision (c) (personnel records exemption) and 6254, subdivision (f) (investigatory records exemption); Evidence Code sections 1040 and 1042 (official information privilege); Code of Civil Procedure section 2018.030 and Penal Code section 1054.6 (attorney work-product privilege); the deliberative process privilege protected by Government Code section 6255; and Government Code section 6254, subdivision (k) and California Constitution, article 1, section 1 (right to privacy).

Finally, we note that your request relates to an issue currently in litigation and on review by the California Supreme Court in the case *Association for Los Angeles Deputy Sheriffs v. Superior Court* (Supreme Court Case No. S243855). In the underlying appellate court case (13 Cal.App.5th 413, 445), the Court of Appeal concluded that disclosure of a Brady list *could not be compelled absent a properly filed Pitchess motion* (see *Pitchess v. Superior Court* (1974) 11 Cal.3d 531). The case was argued before the Supreme Court last month, but at present no opinion has yet been issued by the Court. In the absence of an unequivocal determination by the California Supreme Court that a Brady list may be disclosed absent the filing of a *Pitchess* motion, county agencies that employ peace officers will not disclose any such list.

Very truly yours

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